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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1105 OF 2005

Dadabhau Gopal Walunj ... Appellant.

Vs.

Bhagwant Tukaram Walunj & Ors. ...Respondents.

Mr. Mandar Limaye for the appellant.

Mr. U.B.Nighot for respondent Nos. 1, 2, 3(1), 3(2), 3(3) and 3(4).

CORAM : ANOOP V. MOHTA,J.

DATED : 16th July, 2007

P.C.

1. In a suit for specific performance filed by the respondents-plaintiffs, both the Courts have, after considering the material as well as the material evidence led by the parties, held that the petitioners have purchased the suit land with agreement of re-conveyance. The said re-conveyance dated 19th February, 1977 is a legal and valid document. The submission of the defendants that particular document was prepared as a forged document and a case of fraud have also been rejected. Both the courts came to a conclusion that the plaintiffs have been ready to perform their part of contract. but the defendant did not perform their part of contract. Therefore, the learned Civil Judge, J.D., Khed has granted the decree

for specific performance in the following terms:-

1. The suit of the plaintiffs is partly decreed with costs.

2. The defendant do execute the sale-deed and do deliver the possession of the suit land, as shown in para 1 of the plain to the plaintiffs, by accepting amount of Rs.10,000/- from the plaintiffs, within three months from the date of this order.

3. If the defendant fails to execute the sale-deed and to deliver the possession of the suit lands, within three months, then the plaintiffs are at liberty to get the sale-deed executed and the possession of the suit land through the Court.

4. The plaintiffs to bear the costs of the registration of the sale-deed.

5. The claim of the plaintiffs as regards mesne profits is rejected.

2. The same has been confirmed by the appellate court. Taking all this into account and after considering the reasoning given in respect of specific performance and as there is no perversity in granting the decree, the decree even though itself is the discretional decree, I am not inclined to interfere with the findings of the Courts below. The Second Appeal is, therefore, dismissed. No costs.

[ANOOP V. MOHTA, J.]